

CITY OF FRANKLIN  
SPECIAL COMMON COUNCIL MEETING  
FRANKLIN CITY HALL – COMMON COUNCIL CHAMBERS  
9229 WEST LOOMIS ROAD, FRANKLIN, WISCONSIN  
AGENDA\*  
MONDAY, MAY 22, 2017 AT 4:30 P.M.

- A. Call to Order and Roll Call.
- B. Citizen Comment Period.
- C. A Resolution to Authorize the Repair of the HVAC System of the Police Department by J & H Heating, Incorporated, for an Amount Not to Exceed \$125,000 As Required Due to Damage from a Lightning Strike and in Accordance with a Declaration of Public Emergency by the Board of Public Works.
- D. Adjournment.

\* [Note: Upon reasonable notice, efforts will be made to accommodate the needs of disabled individuals through appropriate aids and services. For additional information, contact the City Clerk's office at (414) 425-7500.]

REMINDERS:

May 29	Memorial Day	City Hall Closed
June 6	Common Council Meeting	6:30 p.m.
June 8	Plan Commission Meeting	7:00 p.m.

RESOLUTION NO. 2017-\_\_\_\_\_

A RESOLUTION TO AUTHORIZE THE REPAIR OF THE HVAC SYSTEM OF THE  
POLICE DEPARTMENT BY J & H HEATING, INCORPORATED, FOR AN AMOUNT  
NOT TO EXCEED \$125,000 AS REQUIRED DUE TO DAMAGE FROM A LIGHTNING  
STRIKE AND IN ACCORDANCE WITH A DECLARATION OF PUBLIC EMERGENCY  
BY THE BOARD OF PUBLIC WORKS

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WHEREAS, a lightning strike on or about May 17, 2017, severely damaged the air-cooled chiller unit of the Police Department's HVAC system thereby rendering the air conditioning nonfunctional, with replacement of the unit through normal bidding procedures taking 14 weeks or more, and, irrespective of a final determination as to insurance coverage, repair or replacement is necessary;

WHEREAS, the Board of Public Works has declared a public emergency exists that threatens the public health or welfare such that an exception from public construction bidding and notice requirement is warranted because 1) the Police Department cannot function effectively or efficiently without air conditioning in the facility and equipment and technology would become substantially at risk of damage or failure without maintaining adequate cooling, and 2) the Police Department of the City of Franklin provides essential public services that protect and provide for the public health and welfare of the City and in order to provide such services and protection the department must be able to operate effectively and efficiently;

WHEREAS, Wisconsin Statute § 62.15, "Public Works," provides, in subsection (1b), that an exception to how contracts are let for public construction projects "for the repair and reconstruction of public facilities when damage or threatened damage thereto creates an emergency, as determined by resolution of the board of public works," and given such a resolution, the Common Council has the authority under the Statutes, per the qualifying exception, to immediately and promptly pursue and contract for the repair of the HVAC system at the Police Department; and

WHEREAS, contingency appropriations are available with the Capital Improvement Fund sufficient to cover the repairs and whereas J & H Heating, Incorporated, is a valued HVAC contractor for the City that has regularly performed well on the City's behalf and has been the low bidder on other, recent HVAC projects for the City.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Common Council of the City of Franklin that the Mayor and City Clerk are authorized to execute a contract with J & H Heating, Incorporated, for the repair and reconstruction of the HVAC system of the Police Department as it relates to the damage sustained from a lightning strike impacting the air-cooled chiller, in a form as acceptable to the City Attorney and for an amount not to exceed \$125,000, with said expenditure coming from the contingency appropriations of the Capital Improvement Fund.

Introduced at a special meeting of the Common Council of the City of Franklin this 19th day of May, 2017, by Alderman \_\_\_\_\_.

Passed and adopted by the Common Council of the City of Franklin this 19th day of May, 2017.

APPROVED:

\_\_\_\_\_  
Stephen R. Olson, Mayor

ATTEST:

\_\_\_\_\_  
Sandra L. Wesolowski, Director of Clerk Services

AYES \_\_\_ NOES \_\_\_ ABSENT \_\_\_

ITEM C.

1220 Mineral Springs Drive  
Port Washington, WI 53074  
Phone: (262) 284-5589  
Fax: (262) 284-3389



To: Franklin PD  
Attn: Mark L.  
Email: mluberda@franklin.wi.gov

From: Chris Wittig  
Date: May 18, 2017  
Re: Chiller Replacement due to storm / electrical damage

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This quote is a result form a recent service request for no cooling. Current Trane air cooled chiller has experienced electrical damage resulting in winding destruction in compressors and majority of condenser fan motors. I have attached pictures to help document current conditions. Due to volume of repairs replacement is suggested over repair. I currently have located a Daikin air cooled chiller (in-stock) at factory and have exercised a 24 hold on this machine. Estimated shipping lead time to job site including final factory commissioning @ 4-5 days.

**Proposed Scope:**

- Isolate, remove and dispose of defective chiller
- Extend concrete pad, required for stock chiller dimensions
- Provide and set new Chiller
- Provide new Vibration isolators, Flow Switch and Y Strainer
- Piping, Insulation and additional glycol charge
- Line Voltage wiring
- Low Voltage control wiring
- Fill, Vent and Start-Up
- First Year Parts and Labor Warranty
- 2<sup>nd</sup> thur 5<sup>th</sup> Year Compressor Parts Only Warranty

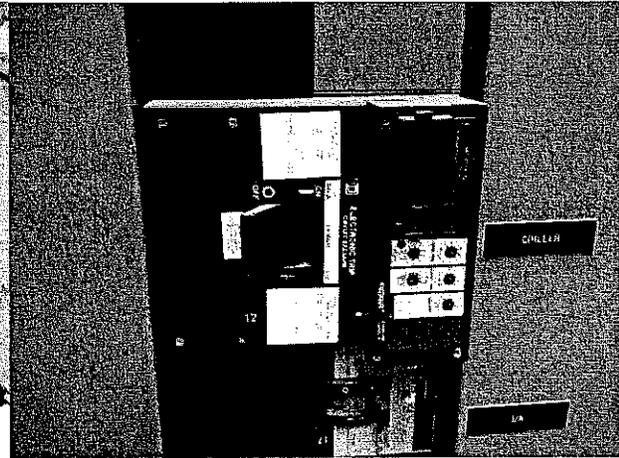
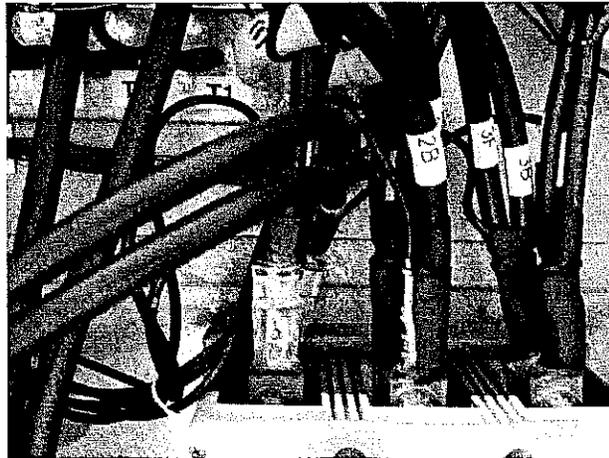
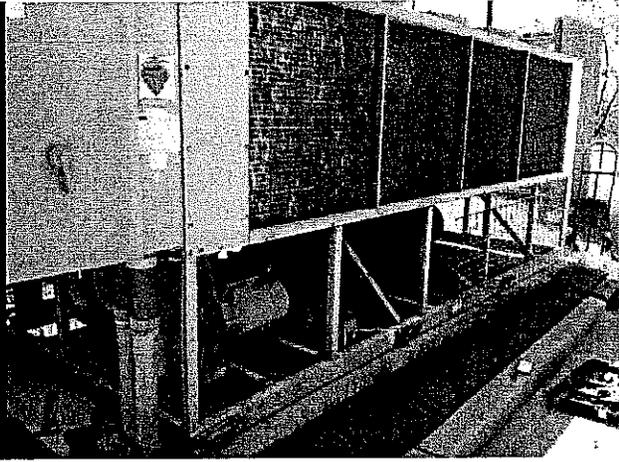
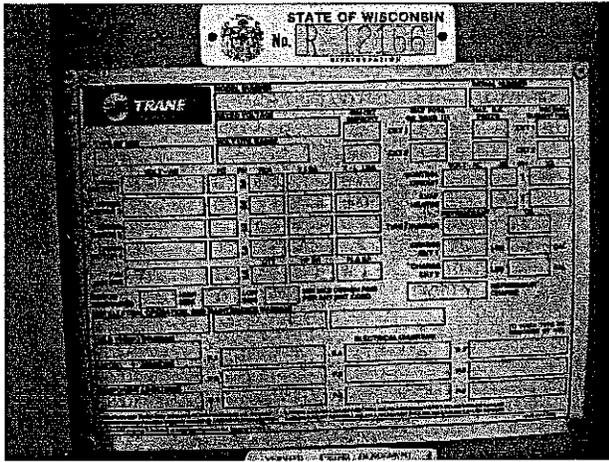
**Notes:**

*Install time estimate dependent on weather @ 2 day installation, with 1 day follow up and insulation.*

**Quote # 051817-1275**  
**BASE BID LESS TAX: \$102,480.00**

Thank you.

Chris Wittig  
Service Manager  
J & H Heating, Inc.



## A G R E E M E N T

This AGREEMENT, made and entered into this \_\_\_ day of May, between the City of Franklin, 9229 West Loomis Road, Franklin, Wisconsin 53132 (hereinafter "CLIENT") and J. & H. Heating, Inc. (hereinafter "CONTRACTOR"), whose principal place of business is 1220 Mineral Springs Drive, Port Washington, Wisconsin 53074.

### W I T N E S S E T H

WHEREAS, the CONTRACTOR is duly qualified and experienced as a municipal services contractor and has offered services for the purposes specified in this AGREEMENT; and

WHEREAS, in the judgment of CLIENT, it is necessary and advisable to obtain the materials and services of the CONTRACTOR to provide a Daikin air cooled chiller as a replacement for the City of Franklin Law Enforcement Center Police Department building air cooled chiller damaged by a lightning strike during the night/morning of May 17-18, 2017.

NOW, THEREFORE, in consideration of these premises and the following mutual covenants, terms, and conditions, CLIENT and CONTRACTOR agree as follows:

#### **I. BASIC SERVICES AND AGREEMENT ADMINISTRATION**

- A. CONTRACTOR shall provide services to CLIENT for the removal and replacement of the air cooled chiller serving the City of Franklin Law Enforcement Center Police Department building, as described in CONTRACTOR's proposal to CLIENT dated May 18, 2017, annexed hereto and incorporated herein as Attachment A.
- B. CONTRACTOR shall serve as CLIENT's professional representative in matters to which this AGREEMENT applies. CONTRACTOR may employ the services of outside consultants and subcontractors when deemed necessary by CONTRACTOR to complete work under this AGREEMENT following approval by CLIENT.
- C. CONTRACTOR is an independent contractor and all persons furnishing services hereunder are employees of, or independent subcontractors to, CONTRACTOR and not of CLIENT. All obligations under the Federal Insurance Contribution Act (FICA), the Federal Unemployment Tax Act (FUTA), and income tax withholding are the responsibility of CONTRACTOR as employer. CLIENT understands that express AGREEMENTS may exist between CONTRACTOR and its employees regarding extra work, competition, and nondisclosure.
- D. During the term of this AGREEMENT and throughout the period of performance of any resultant AGREEMENT, including extensions, modifications, or additions thereto, and for a period of one (1) year from the conclusion of such activity, the parties hereto agree that neither shall solicit for employment any technical or professional employees of the other without the prior written approval of the other party.

## **II. FEES AND PAYMENTS**

CLIENT agrees to pay CONTRACTOR, for and in consideration of the performance of Base Bid Basic Materials and Basic Services further described in Attachment A, \$102,480.00, subject to the terms detailed below:

- A. CONTRACTOR may bill CLIENT and be paid for all work satisfactorily completed hereunder on a monthly basis. CLIENT agrees to pay CONTRACTOR's invoice within 30 days of invoice date for all approved work.
- B. Total price will not exceed budget of \$102,480.00, except as may be provided by change order(s). For services rendered, monthly invoices will include a report that clearly states the hours and type of work completed and the fee earned during the month being invoiced.
- C. In consideration of the faithful performance of this AGREEMENT, the CONTRACTOR will not exceed the fee for Basic Services and expenses without written authorization from CLIENT to perform work over and above that described in the original AGREEMENT.
- D. Should CLIENT find deficiencies in work performed or reported, it will notify CONTRACTOR in writing within thirty (30) days of receipt of invoice and related report and the CONTRACTOR will remedy the deficiencies within thirty (30) days of receiving CLIENT's review. This subsection shall not be construed to be a limitation of any rights or remedies otherwise available to CLIENT.

## **III. MODIFICATION AND ADDITIONAL SERVICES**

- A. This AGREEMENT may only be amended by written instrument signed by both CLIENT and CONTRACTOR.
- B. CLIENT may, in writing, request changes in the Basic Services required to be performed by CONTRACTOR and require a specification of incremental or decremental costs prior to change order agreement under this AGREEMENT. Upon acceptance of the request of such changes, CONTRACTOR shall submit a "Change Order Request Form" to CLIENT for authorization and notice to proceed signature and return to CONTRACTOR. Should any such actual changes be made, an equitable adjustment will be made to compensate CONTRACTOR or reduce the fixed price, for any incremental or decremental labor or direct costs, respectively. Any claim by CONTRACTOR for adjustments hereunder must be made to CLIENT in writing no later than forty-five (45) days after receipt by CONTRACTOR of notice of such changes from CLIENT.
- C. The City of Franklin Chief of Police and/or the Director of Administration are hereby authorized by CLIENT to execute and deliver any change order(s) on behalf of CLIENT.

## **IV. ASSISTANCE AND CONTROL**

- A. Chris Wittig will coordinate the work of the CONTRACTOR, and be solely responsible for communication within the CLIENT's organization as related to all issues originating under this AGREEMENT.
- B. CLIENT will timely provide CONTRACTOR with all available information concerning PROJECT as deemed necessary by CONTRACTOR.

**V. TERMINATION**

- A. This AGREEMENT may be terminated by CLIENT, for its convenience, for any or no reason, upon written notice to CONTRACTOR. This AGREEMENT may be terminated by CONTRACTOR upon thirty (30) days written notice. Upon such termination by CLIENT, CONTRACTOR shall be entitled to payment of such amount as shall fairly compensate CONTRACTOR for all work approved up to the date of termination, except that no amount shall be payable for any losses of revenue or profit from any source outside the scope of this AGREEMENT, including but not limited to, other actual or potential agreements for services with other parties.
- B. In the event that this AGREEMENT is terminated for any reason, CONTRACTOR shall deliver to CLIENT all data, reports, summaries, correspondence, and other written, printed, or tabulated material pertaining in any way to Basic Services that CONTRACTOR may have accumulated. Such material is to be delivered to CLIENT whether in completed form or in process. CLIENT shall hold CONTRACTOR harmless for any work that is incomplete due to early termination.
- C. The rights and remedies of CLIENT and CONTRACTOR under this section are not exclusive and are in addition to any other rights and remedies provided by law or appearing in any other article of this AGREEMENT.

**VI. INSURANCE**

The CONTRACTOR shall, during the life of the AGREEMENT, maintain insurance coverage with an authorized insurance carrier at least equal to the minimum limits set forth below:

A. Limit of General/Commercial Liability	\$3,000,000
B. Automobile Liability: Bodily Injury/Property Damage	\$1,000,000
C. Excess Liability for General Commercial or Automobile Liability	\$10,000,000
D. Worker's Compensation and Employers' Liability	\$500,000
E. Professional Liability	\$2,000,000

Upon the execution of this AGREEMENT, CONTRACTOR shall supply CLIENT with a suitable statement certifying said protection and defining the terms of the policy issued, which shall specify that such protection shall not be cancelled without thirty (30) calendar days prior notice to CLIENT, and naming CLIENT as an additional insured for General Liability.

**VII. INDEMNIFICATION AND ALLOCATION OF RISK**

- A. To the fullest extent permitted by law, CONTRACTOR shall indemnify and hold harmless CLIENT, CLIENT'S officers, directors, partners, and employees from and against costs, losses, and damages (including but not limited to reasonable fees and charges of engineers, architects, attorneys, and other professionals, and reasonable court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of CONTRACTOR or CONTRACTOR'S officers, directors, partners, employees, and consultants in the performance of CONTRACTOR'S services under this AGREEMENT.
- B. To the fullest extent permitted by law, CLIENT shall indemnify and hold harmless CONTRACTOR, CONTRACTOR'S officers, directors, partners, employees, and consultants from and against costs, losses, and damages (including but not limited to reasonable fees and charges of engineers, architects, attorneys, and other professionals, and reasonable court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of CLIENT or CLIENT'S officers, directors, partners, employees, and consultants with respect to this AGREEMENT.
- C. To the fullest extent permitted by law, CONTRACTOR'S total liability to CLIENT and anyone claiming by, through, or under CLIENT for any injuries, losses, damages and expenses caused in part by the negligence of CONTRACTOR and in part by the negligence of CLIENT or any other negligent entity or individual, shall not exceed the percentage share that CONTRACTOR'S negligence bears to the total negligence of CLIENT, CONTRACTOR, and all other negligent entities and individuals.
- D. In addition to the indemnity provided under Paragraph VII.B, and to the fullest extent permitted by law, CLIENT shall indemnify and hold harmless CONTRACTOR and CONTRACTOR'S officers, directors, partners, employees, and consultants from and against injuries, losses, damages and expenses (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other disputes resolution costs) caused by, arising out of, or resulting from an unexpected Hazardous Environmental Condition, provided that (i) any such injuries, losses, damages and expenses is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom, and (ii) nothing in this Paragraph shall obligate CLIENT to indemnify any individual or entity from and against the consequences of that individual or entity's own negligence or willful misconduct.
- E. Nothing contained within this AGREEMENT is intended to be a waiver or estoppel of the contracting municipality CLIENT or its insurer to rely upon the limitations, defenses, and immunities contained within Wisconsin law, including those contained within Wisconsin Statutes §§ 893.80, 895.52, and 345.05. To the extent that indemnification is available and enforceable, the municipality CLIENT or its insurer shall not be liable in indemnity or contribution for an amount greater than the limits of liability for municipal claims established by Wisconsin Law.

### VIII. TIME FOR COMPLETION

CONTRACTOR shall commence work immediately having received a Notice to Proceed as of May \_\_, 2017.

**IX. DISPUTES**

This AGREEMENT shall be construed under and governed by the laws of the State of Wisconsin. The venue for any actions arising under this AGREEMENT shall be the Circuit Court for Milwaukee County. The prevailing party shall be awarded its actual costs of any such litigation, including reasonable attorney fees.

**X. RECORDS RETENTION**

CONTRACTOR shall maintain all records pertaining to this AGREEMENT during the term of this AGREEMENT and for a period of 3 years following its completion. Such records shall be made available by the CONTRACTOR to CLIENT for inspection and copying upon request.

**XI. MISCELLANEOUS PROVISIONS**

- A. Professionalism. The same degree of care, skill and diligence shall be exercised in the performance of the services as is possessed and exercised by a member of the same profession, currently practicing, under similar circumstances, and all persons providing such services under this Agreement shall have such active certifications, licenses and permissions as may be required by law.
- B. Pursuant to Law. Notwithstanding anything to the contrary anywhere else set forth within this Agreement, all services and any and all materials and/or products provided by CONTRACTOR under this Agreement shall be in compliance with all applicable governmental laws, statutes, decisions, codes, rules, orders, and ordinances, be they Federal, State, County or Local.
- C. Conflict of Interest. CONTRACTOR warrants that neither it nor any of its affiliates has any financial or other personal interest that would conflict in any manner with the performance of the services under this Agreement and that neither it nor any of its affiliates will acquire directly or indirectly any such interest. CONTRACTOR warrants that it will immediately notify the CLIENT if any actual or potential conflict of interest arises or becomes known to the CONTRACTOR. Upon receipt of such notification, a CLIENT review and written approval is required for the CLIENT to continue to perform work under this Agreement.

**XII. CONTROLLING TERMS AND PROVISIONS**

The aforesaid terms and provisions shall control over any conflicting term or provision of any CONTRACTOR proposal, Attachment, Exhibit, and standard terms and provisions annexed hereto.

IN WITNESS WHEREOF, the parties have caused this AGREEMENT to be executed on the day and year first above written.

CITY OF FRANKLIN, WISCONSIN

J. & H. Heating, Inc.

BY: \_\_\_\_\_

BY: \_\_\_\_\_

PRINT NAME: Stephen R. Olson

PRINT NAME: \_\_\_\_\_

TITLE: Mayor

TITLE: \_\_\_\_\_

DATE: May, 2017

DATE: \_\_\_\_\_

BY: \_\_\_\_\_

PRINT NAME: Sandra L. Wesolowski

TITLE: City Clerk

DATE: May, 2017

BY: \_\_\_\_\_

PRINT NAME: Paul Rotzenberg

TITLE: Director of Finance and Treasurer

DATE: May, 2017 (as pre-authorized in writing May 18, 2017)